



COUNTY OF LOS ANGELES
DEPARTMENT OF PARKS AND RECREATION
"Creating Community Through People, Parks and Programs"
Russ Guiney, Director

June 15, 2010

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**DELEGATE AUTHORITY TO EXECUTE SOLE SOURCE
SUBSCRIPTION SERVICES CONTRACT
FOR WEATHER BASED IRRIGATION SMART CONTROLLERS
WITH HYDROPOINT DATA SYSTEMS, INC.
(ALL SUPERVISORIAL DISTRICTS) (3 VOTES)**

SUBJECT

To request delegated authority to the Director of the Department of Parks and Recreation to execute a sole source Subscription Services Contract with HydroPoint Data Systems, Inc. to provide a weather based irrigation controllers system to increase irrigation efficiency to adjust watering times in response to weather conditions.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed actions are categorically exempt from the provisions of the California Environmental Quality Act as the actions do not meet the definition of a project according to Section 15378(b)(2) of the State California Environmental Quality Act Guidelines because the actions are continuing administrative or maintenance activities which include subscribing to the use of a software system to provide wireless satellite communication to 137 existing smart controllers.
2. Delegate authority to the Director of the Department of Parks and Recreation to execute a sole source subscription services contract with HydroPoint Data Systems, Inc., for the provision of wireless communication via internet for 137 weather based smart irrigation controllers for an initial term of ten years, with one three year optional renewal period exercised by the Director of the Department of Parks and Recreation. The annual cost is \$31,000 for the initial subscription services. The total cost is \$310,000 during the ten year term, which includes installing approximately 400 plus controllers that will be added at various park facilities.

3. Delegate authority to the Director of the Department of Parks and Recreation to increase the annual cost up to ten percent per-year of the prior year annual cost during the term of the contract and optional renewal period due to an increase in services at the rates provided for in the contract, which includes a tiered system providing for discount rates based on the volume. This delegated authority is contingent upon: (a) availability of funding; and (b) approval by County Counsel and the Chief Executive Office.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The recommended action will enable the Department of Parks and Recreation (Department) to begin a water management program consistent with the Board's policy for water conservation and irrigation efficiency. The subscription services provide wireless satellite communication to 137 smart controllers, already installed, to manage watering times and frequencies to adjust watering times each day in response to the changing weather conditions. The subscription service is necessary to fully optimize the functionality of the smart irrigation controllers and is only available from the contractor due to proprietary software developed by HydroPoint Data Systems, Inc. (HydroPoint).

The subscription services will initially include services at Kenneth Hahn State Recreation Area, Frank G. Bonelli Regional Park, Hollywood Bowl, El Cariso Community Regional Park, Jesse Owens Community Regional Park, Veterans Memorial Community Regional Park and Whittier Narrows Regional Park. The acquisition and the installation of 137 controllers for the seven parks were procured through the Job Order Contract (JOC) program. The JOC agreement was approved by your Board on October 21, 2008, and included the acquisition of hardware, construction and design for the facilities included as part of the JOC agreements. The selected smart controllers were pre-approved by the Metropolitan Water District (MWD) and qualified for the Southern California Water Smart rebate program offered by the MWD. The selected controllers required that the controller system be equipped with proper weather sensor devices to meet the rebate requirements.

Implementation of Strategic Plan Goals

The proposed contract will further the County's Strategic Plan Goals of Operational Effectiveness (Goal 1), and Community and Municipal Services (Goal 3), by utilizing collaborative efforts and partnership to support the Board's Green Building/Sustainable Design policy by using high efficiency irrigation systems.

FISCAL IMPACT/FINANCING

The annual operating cost is \$31,100 for the first year. The total ten year term contract cost of \$310,000 will be funded by the Department's FY 2010-11 operating budget. The subscription services will include weather data transmission 24 hours a day, 7 days a week to all 137 controllers located at the seven parks, listed above. During the term, a discounted tiered pricing will be extended for future projects to the County that will reduce the cost based on the added controllers requiring the subscription services during the terms of the contract and option years.

The Department received a rebate for the purchase of the smart controllers that were pre-approved as meeting the requirements for the rebate program offered by the MWD. The Department will continue to pursue future incentive programs that will reduce the County's cost to provide a more efficient irrigation system at its parks.

Operating Budget Impact

Based on the project description, the Department anticipates ongoing operating costs of \$31,000 annually for weather data service in conjunction with the new irrigation controllers. The ongoing operating cost will be absorbed within the FY 2010-11 Proposed Budget as the total costs is expected to be fully offset by the savings generated in water utility costs.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The subscription services support the County's Green Building Ordinance by providing irrigation controller systems that will conserve the use of water for landscape irrigation. The subscription services will allow delivery of wireless communication to each smart controller at the designated parks to improve the irrigation system efficiency and benefit the County by conserving water.

County Counsel has approved the subscription service contract as to form.

ENVIRONMENTAL DOCUMENTATION

The proposed actions are categorically exempt from California Environmental Quality Act (CEQA) according to Section 15378 (b)(2) of the State CEQA Guidelines because the proposed actions are continuing administrative or maintenance activities which includes subscribing to the use of a software system to provide wireless satellite communication to existing 137 smart controllers.

CONTRACTING PROCESS

HydroPoint is the sole proprietor for the smart controller's maintenance and communication systems (Attachment I). Without this subscription, the smart controllers would operate according to the user programming and would not provide the full benefits and functionality of the controller since they would not adjust their watering schedule in response to weather conditions.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the contract will further enhance the County's goal for efficient irrigation water management at its parks. There are no anticipated impacts to the current services and projects associated with the proposed action.

CONCLUSION

It is requested that an adopted copy of the action taken by your Board and five fully executed copies of the attached contract be forwarded to the Department of Parks and Recreation.

The Honorable Board of Supervisors
6/15/2010
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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Russ Guiney".


RUSS GUINEY
Director

RG:JW:KEH:
GAB:CM:rc

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

SOLE SOURCE CHECKLIST
SUBSCRIPTION SERVICES FOR SMART CONTROLLERS
DEPARTMENT OF PARKS AND RECREATION

Check (✓)	JUSTIFICATION FOR SOLE SOURCE CONTRACTS
	Identify applicable justification and provide documentation for each checked item.
X	➤ Only one bona fide source for the service exists; performance and price competition are not available.
	➤ Quick action is required (emergency situation).
	➤ Proposals have been solicited but no satisfactory proposals were received.
	➤ Additional services are needed to complete an ongoing task and it would be prohibitively costly in time and money to seek a new service provider.
	➤ Maintenance service agreements exist on equipment which must be serviced by the authorized manufacturer's service representatives.
	➤ It is most cost-effective to obtain services by exercising an option under an existing contract.
	➤ It is in the best interest of the County e.g., administrative cost savings, excessive learning curve for a new service provider, etc.
X	Other reason: HydroPoint grants the County access to proprietary software imbedded in the smart controller hardware to allow wireless communication to weather data systems, which includes temperature, wind, solar radiation, humidity and local precipitation data to regulate each controller to adjust irrigation time schedule. The data services can only be provided by the manufacturer that maintains ownership of all copyright, patents, and other intellectual property rights relating to the transmission of weather data to each controller. The cost of services includes the transmission and communication through AT&T wireless network.
<div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">  Deputy Chief Executive Officer, CEO </div> <div style="text-align: center;"> 6/2/10 Date </div> </div>	



COUNTY OF LOS ANGELES
DEPARTMENT OF PARKS AND RECREATION
AND
HYDROPOINT DATA SYSTEMS, INC.
FOR
WEATHER SATELLITE SERVICES
AT VARIOUS COUNTY FACILITIES
FOR WEATHER BASED IRRIGATION CONTROLLERS

JULY 2010

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APPLICABLE DOCUMENTS/STANDARD EXHIBITS

A	RATES AND GENERAL INFORMATION
B	JURY SERVICE PROGRAM
C	DEFAULTED PROPERTY TAX REDUCTIONS PROGRAM
D	CONTROLLER WARRANTY

**CONTRACT BETWEEN
COUNTY OF LOS ANGELES
DEPARTMENT OF PARKS AND RECREATION
AND
HYDROPOINT DATA SYSTEMS, INC.
FOR
WEATHER SATELLITE SERVICES AT VARIOUS COUNTY FACILITIES
FOR WEATHER BASED IRRIGATION CONTROLLERS**

This Contract and Exhibits made and entered into this ____ day of _____, 2010, by and between the County of Los Angeles, hereinafter referred to as the County and HydroPoint Data Systems, Inc., hereinafter referred to as HydroPoint.

RECITALS

WHEREAS, the County operates Kenneth Hahn State Recreation Area, Jesse Owens Park, Whittier Narrows Recreation Area, and Veterans Memorial Community Regional Park and owns/operates El Cariso Community Regional Park, Frank Bonelli Regional County Park, and the Hollywood Bowl; and

WHEREAS, on July 1, 2008, the Board of Supervisors (Board) adopted Agenda Item 69 directing County departments to take action related to current drought conditions by focusing on water conservation and reducing water usage from fifteen to twenty percent; and

WHEREAS, in response to the Board's request, the Department of Parks and Recreation (Department), through separate Job Order Contracts (JOC), has purchased and installed 137 smart water management (smart) controllers manufactured by HydroPoint at the seven County facilities identified above; and

WHEREAS, HydroPoint provides subscription services that will allow the Department to receive high resolution, daily local weather data and updates and secure

internet based monitoring, control and reporting capability to optimize the Department's use of each of the smart controllers installed; and

WHEREAS, the Board is authorized by the provision of Government Code Section 31000 to contract for special services on behalf of the County; and

WHEREAS, HydroPoint warrants that it possesses the competence, expertise, equipment, resources and personnel necessary to provide such services and the County desires to use such services; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

1.0 APPLICABLE DOCUMENTS

Exhibit A is attached hereto and forms a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and Exhibit A, such conflict or inconsistency shall be resolved by giving precedence first to the Contract and then to Exhibit A.

2.0 DEFINITIONS

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- 2.1 Contract:** Contract executed between Los Angeles County and HydroPoint Data Systems, Inc. It sets forth the terms and conditions for the issuance and performance of services.
- 2.2 HydroPoint:** HydroPoint Data Systems, Inc., the entity that has entered into this Contract with Los Angeles County to perform or execute the work covered by this Contract.
- 2.3 Board of Supervisors:** The Board of Supervisors of Los Angeles County acting as governing body or their designee.
- 2.4 County:** The County of Los Angeles

- 2.5 State:** The State of California
- 2.6 HydroPoint Contract Manager:** The individual designated by HydroPoint to administer the Contract operations after award of the Contract.
- 2.7 County Contract Monitor (s):** Person (s) with responsibility to oversee the day to day activities of this Contract. Responsibility for inspections of any and all tasks, deliverables, goods, services and other work provided by the Contractor.
- 2.8 County Contract Manager:** Person designated by the Director with authority to manage the operations related to this Contract, or his/her authorized representative.
- 2.9 Department:** The Los Angeles County Department of Parks and Recreation acting on behalf of the County for matters relating to this Contract.
- 2.10 Director:** The Director of the Department of Parks and Recreation, County of Los Angeles, acting on behalf of the County on contractual or administrative matters relating to the enforcement of this Contract, or his authorized representative(s).
- 2.11 WeatherTRAK ET Everywhere Data Service:** high resolution, daily local ET weather data.
- 2.12 Central Internet Management:** Secure internet base monitoring, control and reporting capability.
- 2.13 Subscription Rate:** Rate accepted and approved by the County and HydroPoint and identified in this Contract. The County shall make payments at such rate for services rendered under the terms and conditions of this Contract.
- 2.14 Service:** County's access to and use of HydroPoint's WeatherTRAK ET Everywhere Data Service and Central Internet Management. The Service provides daily ET weather updates and Central Internet Management to every WeatherTRAK controller with a paid subscription.
- 2.15 Service Grace Period:** Period between the installation and activation of the first controller at a facility and installation and activation of final controller at the same facility.

2.16 Day(s): Calendar day(s) unless otherwise specified.

2.17 Fiscal Year: The twelve (12) month period beginning July 1st and ending the following June 30th.

3.0 SERVICES

3.1 Pursuant to the provisions of this Contract, the County shall receive Services from HydroPoint for those WeatherTRAK controllers installed at the park facilities described hereinafter.

3.2 The County shall not provide any tasks, deliverables, goods, services, or other work, other than as specified in this Contract.

4.0 DESIGNATED PREMISES

Services shall be available for those WeatherTRAK controllers installed and activated at the following park facilities (collectively hereinafter: premises):

- **Kenneth Hahn State Recreation Area**, 4100 S. La Cienega Blvd., Los Angeles
- **Frank G. Bonelli Regional Park**, 120 Via Verde Dr., San Dimas
- **Hollywood Bowl**, 2301 N. Highland Ave., Los Angeles
- **Jesse Owens Community Regional Park**, 9651 S. Western Ave., Los Angeles
- **El Cariso Community Regional Park**, 13100 Hubbard St., Sylmar
- **Veterans Memorial Community Regional Park**, 13000 Sayre St., Sylmar
- **Whittier Narrows Recreation Area**, 750 S. Santa Anita Ave., South El Monte

5.0 TERM OF CONTRACT

5.1 The term of this Contract shall be for a period of ten (10) years commencing on July 1, 2010, following the Director's approval, unless terminated sooner or extended, in whole or in part, as provided for in this contract.

5.2 HydroPoint shall notify the Department when this Contract is within six (6) months from the expiration of the term as provided for hereinabove. Upon occurrence of this event, HydroPoint shall send written notification to the Department at the address herein provided in Section 11.13, Notices, of this Contract.

5.3 At the option of the County, the Contract term may be extended for an additional three (3) year period pursuant to all the same terms and

conditions as provided for in this Contract. Said option period shall be exercised at the sole discretion of the Director, by providing written notice to HydroPoint prior to the expiration of the term identified in Section 5.1 above.

- 5.4 By reasons or acts beyond the control of the County, this Contract may be terminated by the County without liability or damages whenever the County is prevented by operation of laws, acts of God, or by the official action of Local, State or Federal authorities from complying with the provisions of this Contract.

6.0 CONTRACT SUM/CONSIDERATION

- 6.1 The contract sum under the terms of this Contract shall be the total monetary amount payable by the County to HydroPoint for subscription services rendered. Said sum shall comply with the rates identified in Exhibit A, Rates and General Information, which is attached hereto and incorporated herein by reference.
- 6.2 Said rates as identified in Paragraph 6.1 hereinabove shall remain the same as previously approved throughout the term of this Contract. If the Director, in his sole discretion, exercises the option period as described in Section 5.3 above, the base subscription rate during the option period shall be negotiated between the two parties based on the lesser of (1) the then list price or (2) \$237.50. The County shall receive the same tiered discount rates as identified in Exhibit A, Subscription Fees and General Information, for years six (6) through ten (10).
- 6.3 HydroPoint shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein. Assumption or takeover of any of HydroPoint's duties, responsibilities, obligations, or performance of same by any other entity other than HydroPoint, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without

consideration for any reason whatsoever, shall occur only with the County's express prior written approval.

- 6.4 In no event shall HydroPoint be entitled to compensation exceeding the total contract amount unless the Contract is amended in writing pursuant to Section 9.0, Change Notices and Amendments to the Contract.

6.5 No Payment for Services Provided Following Expiration/Termination of Contract

HydroPoint shall have no claim against the County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by HydroPoint prior to the execution of this Contract, or following the expiration or other termination of this Contract. Should HydroPoint receive any such payment it shall immediately notify the County and shall immediately repay all such funds to the County. Payment by the County for services rendered prior to execution or after expiration/termination of this Contract shall not constitute a waiver of the County's right to recover such payment from HydroPoint. This provision shall survive the expiration or other termination of this Contract.

- 6.6 HydroPoint shall maintain a system of record keeping that will allow HydroPoint to determine when it has incurred seventy-five percent (75%) of the total contract authorization under this Contract. Upon occurrence of this event, HydroPoint shall send written notification to the Director at the address herein provided under Subparagraph 11.13, Notices, of this Contract.

6.7 Invoices and Payments

- 6.7.1 HydroPoint shall invoice the County monthly in arrears for providing the Services and priced in accordance with Exhibit A, Rates and General Information.

- 6.7.2 HydroPoint shall present two (2) copies of the monthly invoice for the services provided during the previous thirty (30) days. HydroPoint shall prepare the invoices by contract amount, with each facility and the facility amount identified as separate line items on the invoices. Said invoices shall include the charges owed to HydroPoint by the

County under the terms of this Contract. No invoice will be approved for payment unless the required subject documents identified hereinabove are included with the invoice.

6.7.3 HydroPoint shall submit the monthly invoices to the County on or before the 15th calendar day of each month following the end of the preceding month in the amount of one-twelfth (1/12) of the total annual amount of compensation, or a prorated monthly amount based on the number of smart controllers installed and receiving the subscription service, to be paid by the County for services provided by HydroPoint under the terms and conditions of this Contract. Said payment shall be made within thirty (30) days upon receiving a properly prepared and correct invoice, providing that all delivery of Services performed during the preceding month and has been inspected and accepted by the Director and has been submitted in accordance with the provisions of this Contract.

6.7.4 All invoices submitted by HydroPoint for payment must have the written approval of the Director prior to any payment thereof. In no event shall the County be liable or responsible for any payment prior to such written approval. HydroPoint shall look for payment exclusively from the funds having been allocated by the County for such services.

6.7.5 Service Grace Period

a. All facilities added after the start date of the Contract term will be provided a service grace period between the installation and activation of the first smart controller to the last. The billing date for each additional facility shall be set as the date of the last installed and activated smart controller per facility. The first billing period for any new facility will be prorated from the date of the installation and activation of the final smart controller to the end of the month. HydroPoint will not bill for the active service periods for any days prior to the date of the last smart controller

installed and activated. In no event shall the grace period exceed five (5) weeks.

- b. Subsequent invoices for additional facilities shall be submitted in accordance with the steps identified in this Section 6.7.

6.7.6 Local Small Business Enterprises – Prompt Payment Program

Certified Local SBEs will receive prompt payment for services they provide to County departments. Prompt payment is defined as 15 calendar days after receipt of an undisputed invoice.

7.0 HYDROPOINT'S RESPONSIBILITIES

7.1 Commencement of Services

Upon commencement of the Services, HydroPoint shall provide:

- WeatherTRAK ET Everywhere Data Service;
- Access to WeatherTRAK Central Internet Management software for each active controller within the County premises.
- Toll-free technical support within stated business hours; and

7.2 HydroPoint Staff

7.2.1 HydroPoint shall designate one member of its staff as a Contract Manager with whom the County may deal with on a daily basis. The person selected as a Contract Manager shall be fully acquainted with the Contract operation, familiar with the term and conditions prescribed therefore by this Contract and authorized to act in the day to day operation thereof.

7.2.2 The Director may at any time, give HydroPoint written notice to the effect that the conduct or action of a designated HydroPoint employee is, in the reasonable belief of the Director, detrimental to the interest of the public patronizing the premises. Following the Director's written notice thereof, HydroPoint shall, at the Director's discretion: (1) terminate such employee's work assignment or; (2) HydroPoint shall meet with representatives of the Director to consider the appropriate course of action with respect to such matter and HydroPoint shall take reasonable measures under the

circumstances, to assure the Director that the conduct and activities of HydroPoint employees will not be detrimental to the interest of the public patronizing the premises.

7.2.3 HydroPoint shall be responsible for the conduct and behavior of its employees and agrees to exercise every reasonable effort to not allow any loud, boisterous or disorderly persons about the premises.

7.2.4 HydroPoint shall not provide any tasks, deliverables, goods, services, or other work, other than as specified in this Contract.

7.3 Compliance with Laws, Rules and Regulations

7.3.1 HydroPoint shall conform to and abide by all municipal, County, State and Federal laws and regulations, insofar as the same or any of them are applicable; and where permits and/or licenses are required, the same must be first obtained by HydroPoint from the regulatory agency having jurisdiction thereover. Further, HydroPoint shall conform to and abide by all rules and regulations and policies of the Board of Supervisors and/or the Director of the Department of Parks and Recreation insofar as the same or any of them are applicable.

7.3.2 HydroPoint hereby agrees to cooperate with the Director, County Contract Managers and Monitors and any appropriate State or Federal representatives, in the reviewing and monitoring of the HydroPoint's Service Program, records and procedures, at any reasonable time, as requested by the County.

7.4 At any time prior to or during the term of this Contract, the County may require that all of the Contractor's staff performing work under this Contract undergo and pass, to the satisfaction of the County, a background investigation, as a condition of beginning and continuing to work under this Contract. The County shall use its discretion in determining the method of background clearance to be used, up to and including a County performed fingerprint security clearance. The fees associated with obtaining the background information shall be at the sole

expense of the Contractor, regardless if the Contractor's staff passes or fails the background clearance investigation.

7.4.1 If a member of Contractor's staff does not pass the background investigation, County may request that the member of Contractor's staff be immediately removed from performing services under the Contract at any time during the term of the Contract. County will not provide to Contractor or to Contractor's staff any information obtained through the County's background investigation.

7.4.2 County, in its sole discretion, may immediately deny or terminate facility access to any member of Contractor's staff that does not pass such investigation to the satisfaction of the County or whose background or conduct is incompatible with County facility access.

7.4.3 Disqualification of any member of Contractor's staff pursuant to this Paragraph 7.4 shall not relieve Contractor of its obligation to complete all work in accordance with the terms and conditions of this Contract.

8.0 ENFORCEMENT OF CONTRACT

8.1 The Director shall be responsible for the enforcement of this Contract on behalf of the County and shall be assisted therein by those officers and employees of the County having duties in connection with the administration thereof. The Director hereby reserves the right to: (a) assign such personnel as are needed to serve as Contract Manager and Contract Monitor(s) in order to inspect and review HydroPoint's performance of, and compliance with, all contractual services, duties, obligations, responsibilities, administrative procedures and staffing as set forth in this Contract, and (b) require HydroPoint to provide such written documentation and/or regular reports as the Director deems necessary to verify and review HydroPoint's performance under this Contract.

8.2 The County reserves the right to perform inspections at any time for the purpose of maintaining HydroPoint's compliance with all Contract terms and conditions and performance standards.

- 8.3 HydroPoint hereby agrees to cooperate with the Director, County Contract Managers and Monitors, and any appropriate State or Federal representatives, in the review and monitoring of HydroPoint's service program, records and procedures at any reasonable time, as requested by the County.
- 8.4 In the event the County commences legal proceedings for the enforcement of this Contract HydroPoint does hereby agree to pay any sum which may be awarded to the County by the Court for attorney's fees and costs incurred in the action brought thereon.

9.0 CHANGE NOTICES AND AMENDMENTS TO THE CONTRACT

The County reserves the right to change or amend such other terms and conditions that may be necessary. All such revisions shall be accomplished in the following manner:

- 9.1 The County's Board of Supervisors, Chief Executive Officer, or designee may require the addition of and/or change certain terms and conditions in the Contract during the term of this Contract. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors or Chief Executive Officer. To implement such orders, an Amendment to the Contract shall be prepared and executed by HydroPoint and the Director.
- 9.2 The Director may, at his sole discretion, authorize extensions of time as defined in Section 5.0, Term of Contract, of this Contract. HydroPoint agrees that such exercise of an option term shall not change any other term or condition of this Contract during the periods of such extensions. To exercise the option, a "Notice of Intent to Exercise Option" letter shall be prepared and executed by the Director.

9.3 Addition/Deletion of Park Facilities

The Director or his/her designee may at his/her sole discretion add or delete park facilities to the Contract. Facilities may be added or deleted at any time. The Director shall issue a Change Notice to HydroPoint to add or delete park facilities.

- 9.3.1 In the event that the Director adds a facility(ies) to the Contract, the Director shall amend the Contract by issuing a Change Notice adding the facility(ies) effective the day following the installation of final controller at the facility and increasing the sum of the Contract at the rate identified in Exhibit A, Rates and General Information.
- The Director is authorized to increase the Contract amount up to a maximum of twenty-five percent (25%) of the annual Contract amount.
- 9.3.2 In the event the Director deletes a facility(ies) from the Contract, the Director shall amend the Contract by issuing a Change Notice deleting the facility(ies) and reducing the sum of the Contract pro tanto.
- 9.3.3 In the event that the Director deletes the subscription service from one or more of the controller(s) at a facility, a Change Notice shall be issued by the Director deleting the subscription service of the controller(s) at the facility and reducing the sum of the contract pro tanto.

10.0 CONTRACTOR RESPONSIBILITY AND DEBARMENT

10.1 Responsible Contractor

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the Agreement. It is the County's policy to conduct business only with responsible Contractors.

10.2 Chapter 2.202 of the County Code

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other Agreements which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County Agreements for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if

warranted by the circumstances, and terminate any or all existing Contracts the Contractor may have with the County.

10.3 Non-responsible Contractor

The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated a term of a Agreement with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a Agreement with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

10.4 Contractor Hearing Board

1. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to

the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.
5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.
6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of

Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

10.5 Subcontractors of Contractor

These terms shall also apply to Subcontractors of County Contractors.

11.0 STANDARD TERMS AND CONDITIONS

11.1 Cancellation

11.1.1 This Contract may be revoked by the County in the event of any failure or refusal on the part of HydroPoint to keep or perform the terms and conditions herein.

11.1.2 As a condition precedent to the Director recommending cancellation to said Board, the Director shall give HydroPoint ten (10) days notice by personal service or by registered or certified mail of the premises therefore and indicate that an opportunity to be heard thereon will be afforded prior to such recommendation by the Director, if request is made therefore.

11.2 Compliance with Civil Rights Laws

HydroPoint hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

11.3 Compliance with County's Jury Service Program

11.3.1 Jury Service Program

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is

attached as Exhibit B and incorporated by reference into and made a part of this Contract.

11.3.2 Written Employee Jury Service Policy

1. Unless the Contractor has demonstrated to the County's satisfaction either that the Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.
2. For purposes of this Subparagraph, "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of the Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If the Contractor uses any Subcontractor to perform services for

the County under the Contract, the Subcontractor shall also be subject to the provisions of this Sub-paragraph. The provisions of this Subparagraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.

3. If the Contractor is not required to comply with the Jury Service Program when the Contract commences, the Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the Contractor shall immediately notify the County if the Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if the Contractor no longer qualifies for an exception to the Jury Service Program. In either event, the Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that the Contractor demonstrate to the County's satisfaction that the Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that the Contractor continues to qualify for an exception to the Program.
4. The Contractor's violation of this Subparagraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, the County may, in its sole discretion, terminate the Contract and/or bar the Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

11.4 Contractor's Warranty of Compliance with County's Defaulted Property Tax Reduction Program

- 11.4.1 Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially

from County through contract are currently in paying their property tax obligations (secured and unsecured toll) in order to mitigate the economic burden otherwise imposed upon County and its tax payers.

11.4.2 Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles County code Chapter 2.206.

11.5 Facsimile Representations

The County and HydroPoint hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Notices and Amendments and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Change Notices and Amendments to this Contract, and that the parties will follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

11.6 Governing Law, Jurisdiction, and Venue

The Contract shall be governed by, and construed in accordance with, the laws of the State of California. HydroPoint agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

11.7 Indemnification

HydroPoint agrees to indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to, demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with HydroPoint's or any of its elected or appointed officials, officers, employees, and agents' acts and/or omissions arising from and/or relating to this Contract. HydroPoint's duty

to indemnify the County shall survive the expiration or other termination of this Contract.

11.8 Independent License

This Contract is by and between the County of Los Angeles and HydroPoint and is not intended, and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association, as between County and HydroPoint.

11.9 Insurance Requirements, General Provisions

Without limiting HydroPoint's indemnification of County, and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, HydroPoint shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Sections 11.9 and 11.10 of this Contract. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon HydroPoint pursuant to this Contract. The County in no way warrants that the Required Insurance is sufficient to protect HydroPoint for liabilities which may arise from or relate to this Contract.

11.9.1 Evidence of Coverage and Notice to County

- Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under HydroPoint's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Contract.
- Renewal Certificates shall be provided to County not less than 10 days prior to HydroPoint's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required insurance policies at any time.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the

insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Contract. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required endorsement forms.

- Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by HydroPoint, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

County of Los Angeles
Department of Parks and Recreation, Contracts Division
301 North Baldwin Avenue, Arcadia CA 91007
Attention: Kandy Hays, Chief Contracts Division

HydroPoint also shall promptly report to County any injury or property damage accident or incident, including any injury to a HydroPoint employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to HydroPoint. HydroPoint also shall promptly notify County of any third party claim or suit filed against HydroPoint or any of its Sub-Contractors which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against HydroPoint and/or County.

11.9.2 Additional Insured Status and Scope of Coverage

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County

and its Agents) shall be provided additional insured status under HydroPoint's General Liability policy with respect to liability arising out of HydroPoint's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of HydroPoint's acts or omissions, whether such liability is attributable to HydroPoint or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

11.9.3 Cancellation of Insurance

Except in the case of cancellation for non-payment of premium, HydroPoint's insurance policies shall provide, and Certificates shall specify, that County shall receive not less than thirty (30) days advance written notice by mail of any cancellation of the Required Insurance. Ten (10) days prior notice may be given to County in event of cancellation for non-payment of premium.

11.9.4 Failure to Maintain Insurance

HydroPoint's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which County immediately may suspend or terminate this Contract. County, at its sole discretion, may obtain damages from HydroPoint resulting from said breach.

11.9.5 Insurer Financial Ratings

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

11.9.6 Contractor's Insurance Shall Be Primary

HydroPoint's insurance policies, with respect to any claims related to this Contract, shall be primary with respect to all other sources of coverage available to HydroPoint. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any HydroPoint coverage.

11.9.7 Waivers of Subrogation

To the fullest extent permitted by law, HydroPoint hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Contract. HydroPoint shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

11.9.8 Sub-Contractor Insurance Coverage Requirements

HydroPoint shall include all Sub-Contractors as insureds under HydroPoint's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. HydroPoint shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County and HydroPoint as additional insureds on the Sub-Contractor's General Liability policy. HydroPoint shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

11.9.9 Deductibles and Self-Insured Retentions (SIRs)

HydroPoint's policies shall not obligate the County to pay any portion of any HydroPoint deductible or SIR. The County retains the right to require HydroPoint to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing HydroPoint's payment of all deductibles and SIRs, including all related claims investigation, administration and

defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

11.9.10 Claims Made Coverage

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Contract. HydroPoint understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

11.9.11 Application of Excess Liability Coverage

HydroPoint may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

11.9.12 Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

11.9.13 Alternative Risk Financing Programs

The County reserves the right to review, and then approve, HydroPoint use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

11.9.14 County Review and Approval of Insurance Requirements

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

11.10 Insurance Coverage Requirements

11.10.1 Commercial General Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming

County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

11.10.2 **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of HydroPoint's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

11.10.3 **Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If HydroPoint will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to HydroPoint's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

11.11 **Non-Discrimination and Affirmative Action**

11.11.1 HydroPoint hereby certifies and agrees that it will comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of

1975, Title IX of the Education Amendments of 1972, where applicable, and Title 43, part 17 of the Code of Federal Regulations Subparts A and B, and the Americans with Disabilities Act of 1990, to the end that no persons shall, on the grounds of race, creed, color, national origin, political affiliation, marital status, sex, age or disability, be subject to discrimination under the privileges and use granted by this Contractor under any project, program or activity supported by this Contract.

- 11.11.2 HydroPoint certifies and agrees that all persons employed thereby, are and shall be treated equally without regard to or because of race, creed, color, national origin, sex, age, marital status, or disability, and in compliance with all Federal and State laws prohibiting discrimination in employment, including, but not limited to, the Federal Civil Rights Act of 1964, the Unruh Civil Rights Act, the Cartwright Act, and the State Fair Employment Practices Act.
- 11.11.3 HydroPoint certifies and agrees that subcontractors, if any, bidders and vendors thereof are and shall be selected without regard to or because of race, creed, color, national origin, sex, age, marital status, or disability.
- 11.11.4 All employment records of employees working at the premises shall be open for inspection and re-inspection at any reasonable time during the term of this Contract for the purpose of verifying the practice of non-discrimination by HydroPoint in the areas heretofore described. All information obtained in connection with the inspections of records shall be treated as confidential information and exempt from public disclosure thereof to the extent permitted by law.
- 11.11.5 If County finds that any of the above provisions have been violated, the same shall constitute a material breach of contract upon which County may determine to cancel,

terminate, or suspend this Contract. County reserves the right to determine independently that the non-discrimination provisions of this Contract have been violated. In addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that HydroPoint has violated State or Federal non-discrimination laws or regulations shall constitute a finding by County that HydroPoint has violated the non-discrimination provisions of this Contract.

11.11.6 The parties agree that in the event HydroPoint violates the non-discrimination provisions contained herein, County shall, at its option, be entitled to a sum of FIVE HUNDRED DOLLARS (\$500.00) pursuant to California Civil Code 1671 as liquidated damages in lieu of canceling, terminating or suspending this Contract. HydroPoint further agrees that FIVE HUNDRED DOLLARS (\$500.00) is a reasonable sum under all of the circumstance existing at the time of the execution of this Contract.

11.12 Notices

Any notice required to be given under the terms of this Contract any law applicable thereto may be: (1) by facsimile; (2) sent by electronic mail (email); (3) delivered by personal service, placed in a sealed envelope, with postage paid, return receipt requested, addressed to the person on whom it is to be served, and deposited in a post office, mailbox, sub-post office, substation or mail chute, or other like facility regularly maintained by the United States Postal Service. **The address to be used for any notice served by mail upon HydroPoint shall be: HydroPoint Data Systems Inc., Attention: Chief Executive Officer, 1720 Corporate Circle, Petaluma CA 94954, or such other place as may hereafter be designated in writing to the Director by HydroPoint. The address to be used for any notice served by mail upon the County shall be: Planning and**

Development Agency, Attention: Development Division, 510 South Vermont Avenue, Los Angeles, CA 90020, or such other place as may hereafter be designated in writing to HydroPoint by the Director. Service by mail shall be deemed complete upon deposit in the above mentioned manner. Addresses may be changed by either party by giving ten (10) days prior written notice thereof to the other party. The Director shall have the authority to issue all notices or demands required or permitted by the County under this Contract.

11.13 Public Records Act

11.13.1 Any documents submitted by HydroPoint; all information obtained in connection with the County's right to audit and inspect HydroPoint's documents, books, and accounting records pursuant to Section 11.14, Record Retention and Inspection/Audit Settlement, of this Contract; become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary." The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

11.13.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret," "confidential," or "proprietary," HydroPoint agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in an action or liability arising under the Public Records Act.

11.14 Record Retention and Inspection/Audit Settlement

HydroPoint shall maintain accurate and complete financial records of its activities and operations relating to this Contract. HydroPoint agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment and proprietary data and information, shall be kept and maintained by HydroPoint and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by HydroPoint at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, HydroPoint shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

11.14.1 In the event that an audit of HydroPoint is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by HydroPoint or otherwise, then HydroPoint shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of HydroPoint's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

11.14.2 Failure on the part of HydroPoint to comply with any of the provisions of this Sub-paragraph shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.

11.14.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the County conduct an audit of HydroPoint regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is more than the payments made by HydroPoint to the County, then the difference shall be either: a) repaid by HydroPoint to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, added to any amounts due to the County from HydroPoint, whether under this Contract or otherwise.

11.15 Recycled Bond Paper

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, HydroPoint agrees to use recycled-content paper to the maximum extent possible on this Contract.

11.16 Severability

If any provision of this Contract is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby and shall remain in full force and effect.

11.17 Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reductions Program

Failure of Concessionaire to maintain compliance with the requirements set for in Paragraph 11.4, Concessionaire's Warranty of Compliance with County's Defaulted Property Tax Reduction Program, shall constitute default under this contract. Without limiting the rights and remedies available to County under any other provisions of this contract, failure of contractor to cure such default within 10 days of notice shall be grounds upon which County may terminate this contract and/or pursue debarment of Contractor, pursuant to County code chapter 2.206.

11.18 Termination for Non-Appropriation of Funds

Notwithstanding any other provision of this Contract, the County shall not be obligated for the Contractor's performance hereunder or by any provision of this Contract during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Contract in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

11.19 Termination for Convenience

This Contract may be terminated, in whole or in part, with or without cause from time to time, when in the County's sole discretion, such action to be in its best interest. Termination shall be effected by a written Notice of Termination to HydroPoint specifying the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than thirty (30) days after the date of such notice.

11.20 Termination for Insolvency

11.20.1 The County may terminate this Contract forthwith in the event of the occurrence of any of the following:

- a. Insolvency of HydroPoint. HydroPoint shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not HydroPoint is insolvent within the meaning of the Federal Bankruptcy Code;
 - b. The filing of a voluntary or involuntary petition regarding the Contract under the Federal Bankruptcy Code;
 - c. The appointment of a Receiver or Trustee for HydroPoint;
- or

d. The execution by HydroPoint of a general assignment for the benefit of creditors.

11.20.2 The rights and remedies of the County provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

11.21 Validity

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

12.0 MOST FAVORED PUBLIC ENTITY

If HydroPoint's prices decline, or should HydroPoint at any time during the term of this Contract provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Contract, then such lower prices shall be immediately extended to the County. This excludes customers who prepay for services/subscriptions on at least a yearly basis.

13.0 ENTIRE CONTRACT

This document and the exhibit(s) attached hereto, constitutes the entire Contract between the County and HydroPoint for the authorized subscription Services. All other agreements, promises and representations with respect thereto, other than contained herein, are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document, and the exhibit(s) attached hereto, the terms, conditions, promises and covenants relating to HydroPoint's operation and the premises to be used in the conduct thereof.

14.0 AUTHORIZATION WARRANTY

HydroPoint represents and warrants that the person(s) executing this Contract for HydroPoint is (are) authorized agent(s) who have actual authority to bind

HydroPoint to each and every term, condition, and obligation of this Contract and that all requirements of HydroPoint have been fulfilled to provide such authority.

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IN WITNESS WHEREOF, HydroPoint has executed this Contract, or caused it to be duly executed and the County of Los Angeles, by order of its Board of Supervisors has caused this Contract to be executed on its behalf by the Director of the Department of Parks and Recreation thereof, the day, month and year first above written.

COUNTY OF LOS ANGELES

By _____
Russ Guiney, Director
Department of Parks and Recreation

HYDROPOINT DATA SYSTEMS, INC.

By _____
Robert Torre, Senior VP Finance

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN

County Counsel

By _____
Christina A. Salseda, Principal Deputy

EXHIBIT A

Subscription Fees and General Information

I. SUBSCRIPTION FEES

A. Subscription Rates

1. Year 1: July 1, 2010 through June 30 2011

Unit Description	Unit Cost/Year	Quantity	ANNUAL TOTAL	1 YEAR TOTAL
CIM-PRO2C-1248-1YR; Pro2Central ET Service	\$202.50	137	\$27,742.50	\$27,742.50

2. Years 2-5: July 1, 2011 through June 30 2015

Unit Description	Unit Cost/Year	Quantity	ANNUAL TOTAL	4 YEAR TOTAL
CIM-PRO2C-1248-1YR; Pro2Central ET Service	\$213.75	137	\$29,283.75	\$117,135

3. Years 6-10: July 1, 2015 through June 30 2020

Unit Description	Unit Cost/Year	Quantity	ANNUAL TOTAL	5 YEAR TOTAL
CIM-PRO2C-1248-1YR; Pro2Central ET Service	\$237.50	137	\$32,537.50	\$162,687.50

Pursuant to Paragraph 6.2 of the Contract, the Subscription Rates for the Service provided by HydroPoint shall remain the same as agreed throughout the Term of the Contract. If the Director, in his sole discretion, exercises the three (3) year Option Period, then the Subscription Rates for the Service provided by HydroPoint during the Option Period shall be negotiated by both parties based on the lesser of (1) the then list price or (2) \$237.50. Following is a list of the number of controllers by facility and their annual costs.

Year 1 Prices:

Facility	No. of Controllers	Cost per Controller	Annual Amount
Kenneth Hahn	31	\$202.50	\$ 6,277.50
Bonelli Park	21	\$202.50	\$ 4,252.50
Hollywood Bowl	10	\$202.50	\$ 2,025.00
Jesse Owens	9	\$202.50	\$ 1,822.50
El Cariso	9	\$202.50	\$ 1,822.50
Veterans Memorial	6	\$202.50	\$ 1,215.00
Whittier Narrows	51	\$202.50	\$10,327.50
TOTALS	137	\$202.50	\$27,742.50

EXHIBIT A

Subscription Fees and General Information

Years 2 - 5 Prices

Facility	No. of Controllers	Cost per Controller	Annual Amount
Kenneth Hahn	31	\$213.75	\$ 6,626.25
Bonelli Park	21	\$213.75	\$ 4,488.75
Hollywood Bowl	10	\$213.75	\$ 2,137.50
Jesse Owens	9	\$213.75	\$ 1,923.75
El Cariso	9	\$213.75	\$ 1,923.75
Veterans Memorial	6	\$213.75	\$ 1,282.50
Whittier Narrows	51	\$213.75	\$10,901.25
TOTALS	137	\$213.75	\$29,283.75

Years 6 – 10 Prices

Facility	No. of Controllers	Cost per Controller	Annual Amount
Kenneth Hahn	31	\$237.50	\$ 7,362.50
Bonelli Park	21	\$237.50	\$ 4,987.50
Hollywood Bowl	10	\$237.50	\$ 2,375.00
Jesse Owens	9	\$237.50	\$ 2,137.50
El Cariso	9	\$237.50	\$ 2,137.50
Veterans Memorial	6	\$237.50	\$ 1,425.00
Whittier Narrows	51	\$237.50	\$12,112.50
TOTALS	137	\$237.50	\$32,537.50

In the event that County removes a controller or a controller is inoperable for longer than three (3) consecutive days, then HydroPoint shall reduce the cost invoiced to the County, accordingly, on a prorated basis. If said invoices are not reduced to reflect controllers that have either been removed or are inoperable as defined above, County shall deduct said costs from the invoice(s).

B. Tiered Rates

All controllers purchased and activated at county parks will incrementally add to the cumulative volume of active subscriptions. Once the volume of controllers (or units) exceeds the threshold listed in the tiered discount structure in the tables below, a new price will be billed from that point into the future per each unit. No discounts will be given in arrears for months already serviced. The tiered rates as identified in Table 3 below shall be applicable to any option period exercised at the Director's sole discretion.

Table 1: Year 1

TIERED DISCOUNT off 2010 List Prices		
Number of Units	% Discount	Subscription Rate
1 – 249	10%	\$202.50
250+	10%	\$202.50

EXHIBIT A

Subscription Fees and General Information

Table 2: Year 2-5

TIERED DISCOUNT off 2010 List Prices		
Number of Units	% Discount	Subscription Rate
1 – 249	5%	\$213.75
250+	10%	\$202.50

Table 3: Years 6-10

TIERED DISCOUNT off List Price as of June 30, 2015		
Number of Units	% Discount	Subscription Rate
1 – 249	5%	Not to exceed \$237.50
250+	10%	Not to exceed \$237.50

II. GENERAL INFORMATION

A. Customer Support

1. HydroPoint Support

Both English and Spanish support shall be available toll free at (800) 362-8774. The Customer Support e-mail is support@hydropoint.com. The initial technical support person shall monitor issues and communicate the status with the County. The County satisfaction with any customer support and the product line shall be measured with periodic customer surveys.

Summer Hours:

Monday through Friday 7 am through 6 pm PDT
Saturday 9 am through 2 pm PDT

When daylight savings time changes to standard time:

Monday through Friday 7 am through 5 pm PST
Saturday 9 am through 2 pm PST

2. County Support

The County contacts/monitors for the facilities identified in Section 4, Designated Premises, of the Contract are as follows:

FACILITIES	CONTACT/MONITOR	PHONE
Kenneth Hahn	Superintendent of the Facility	323-298-3660
Jesse Owens	South Agency Grounds Maintenance Supervisor	310-965-8226
El Cariso	North Agency Grounds Maintenance Supervisor	661-257-6523
Veterans Memorial	North Agency Grounds Maintenance Supervisor	661-257-6523
Bonelli Regional Park	Superintendent of the Facility	909-599-8411
Hollywood Bowl	Director of Operations	323-850-2060
Whittier Narrows	Superintendent of the Facility	626-575-5526

EXHIBIT A

Subscription Fees and General Information

B. Discontinuance of Subscription Service

In the event that County discontinues the Subscription Service:

- a. HydroPoint shall contact the County instructing the County to select "User no ET" station mode to avoid the risk to County's landscape as a result of no longer receiving Subscription Service.
- b. The controller's radio will be disabled.

C. Warranty and Support– Hardware and Service

All WeatherTRAK smart controllers installed and activated shall carry a manufacturer 5 year warranty (attached as Exhibit D).

The County shall address all Hardware warranty issues directly to HydroScape at (858) 560-1600.

The County shall address all Service related issues related to ET Everywhere Weather Service, WeatherTRAK Central Internet Service, and the smart controller software directly to HydroPoint at (800) 362-8774.

1. Hardware

The Hardware shall be defined as:

All the parts making up the physical smart controller which is installed in the ground.

2. Software

The Software shall be defined as:

All information gathering devices located inside the smart controller that communicates with the satellite, the web software and all relating internet access programming

EXHIBIT B
Title 2 Administration
Chapter 2.203 Contractor Employee Jury Service

2.203.010 Findings.

The board of supervisors makes the following findings. The county of Los Angeles allows its permanent, full-time employees unlimited jury service at their regular pay. Unfortunately, many businesses do not offer or are reducing or even eliminating compensation to employees who serve on juries. This creates a potential financial hardship for employees who do not receive their pay when called to jury service, and those employees often seek to be excused from having to serve. Although changes in the court rules make it more difficult to excuse a potential juror on grounds of financial hardship, potential jurors continue to be excused on this basis, especially from longer trials. This reduces the number of potential jurors and increases the burden on those employers, such as the county of Los Angeles, who pay their permanent, full-time employees while on juror duty. For these reasons, the county of Los Angeles has determined that it is appropriate to require that the businesses with which the county contracts possess reasonable jury service policies. (Ord. 2002-0015 § 1 (part), 2002)

2.203.020 Definitions.

The following definitions shall be applicable to this chapter:

A. "Contractor" means a person, partnership, corporation or other entity which has a contract with the county or a subcontract with a county contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more such contracts or subcontracts.

B. "Employee" means any California resident who is a full-time employee of a contractor under the laws of California.

C. "Contract" means any agreement to provide goods to, or perform services for or on behalf of, the county but does not include:

1. A contract where the board finds that special circumstances exist that justify a waiver of the requirements of this chapter; or

2. A contract where federal or state law or a condition of a federal or state program mandates the use of a particular contractor; or

3. A purchase made through a state or federal contract; or

4. A monopoly purchase that is exclusive and proprietary to a specific manufacturer, distributor, or reseller, and must match and inter-member with existing supplies, equipment or systems maintained by the county pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-3700 or a successor provision; or

5. A revolving fund (petty cash) purchase pursuant to the Los Angeles County Fiscal Manual, Section 4.4.0 or a successor provision; or

6. A purchase card purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-2810 or a successor provision; or

7. A non-agreement purchase with a value of less than \$5,000 pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section A-0300 or a successor provision; or

EXHIBIT B
Title 2 Administration
Chapter 2.203 Contractor Employee Jury Service

8. A bona fide emergency purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section PP-1100 or a successor provision.

D. "Full time" means 40 hours or more worked per week, or a lesser number of hours if:

1. The lesser number is a recognized industry standard as determined by the chief administrative officer, or

2. The contractor has a long-standing practice that defines the lesser number of hours as full time.

E. "County" means the county of Los Angeles or any public entities for which the board of supervisors is the governing body. (Ord. 2002-0040 § 1, 2002: Ord. 2002-0015 § 1 (part), 2002)

2.203.030 Applicability.

This chapter shall apply to contractors who enter into contracts that commence after July 11, 2002. This chapter shall also apply to contractors with existing contracts which are extended into option years that commence after July 11, 2002. Contracts that commence after May 28, 2002, but before July 11, 2002, shall be subject to the provisions of this chapter only if the solicitations for such contracts stated that the chapter would be applicable. (Ord. 2002-0040 § 2, 2002: Ord. 2002-0015 § 1 (part), 2002)

2.203.040 Contractor Jury Service Policy.

A contractor shall have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees' regular pay the fees received for jury service. (Ord. 2002-0015 § 1 (part), 2002)

2.203.050 Other Provisions.

A. Administration. The chief administrative officer shall be responsible for the administration of this chapter. The chief administrative officer may, with the advice of county counsel, issue interpretations of the provisions of this chapter and shall issue written instructions on the implementation and ongoing administration of this chapter. Such instructions may provide for the delegation of functions to other county departments.

B. Compliance Certification. At the time of seeking a contract, a contractor shall certify to the county that it has and adheres to a policy consistent with this chapter or will have and adhere to such a policy prior to award of the contract. (Ord. 2002-0015 § 1 (part), 2002)

EXHIBIT B
Title 2 Administration
Chapter 2.203 Contractor Employee Jury Service

2.203.060 Enforcement and Remedies.

For a contractor's violation of any provision of this chapter, the county department head responsible for administering the contract may do one or more of the following:

1. Recommend to the board of supervisors the termination of the contract; and/or,
2. Pursuant to chapter 2.202, seek the debarment of the contractor. (Ord. 2002-0015 § 1 (part), 2002)

2.203.070 Exceptions.

A. Other Laws. This chapter shall not be interpreted or applied to any contractor or to any employee in a manner inconsistent with the laws of the United States or California.

B. Collective Bargaining Agreements. This chapter shall be superseded by a collective bargaining agreement that expressly so provides.

C. Small Business. This chapter shall not be applied to any contractor that meets all of the following:

1. Has ten or fewer employees during the contract period; and,
2. Has annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, are less than \$500,000; and,
3. Is not an affiliate or subsidiary of a business dominant in its field of operation.

"Dominant in its field of operation" means having more than ten employees and annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, exceed \$500,000.

"Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation. (Ord. 2002-0015 § 1 (part), 2002)

2.203.090 Severability.

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. (Ord. 2002-0015 § 1 (part), 2002)

EXHIBIT C
Title 2 ADMINISTRATION
Chapter 2.206 DEFAULTED PROPERTY TAX REDUCTION PROGRAM

2.206.010 Findings and Declarations.

The Board of Supervisors finds that significant revenues are lost each year as a result of taxpayers who fail to pay their tax obligations on time. The delinquencies impose an economic burden upon the County and its taxpayers. Therefore, the Board of Supervisors establishes the goal of ensuring that individuals and businesses that benefit financially from contracts with the County fulfill their property tax obligation. (Ord. No. 2009-0026 § 1 (part), 2009.)

2.206.020 Definitions.

The following definitions shall be applicable to this chapter:

- A. "Contractor" shall mean any person, firm, corporation, partnership, or combination thereof, which submits a bid or proposal or enters into a contract or agreement with the County.
- B. "County" shall mean the county of Los Angeles or any public entities for which the Board of Supervisors is the governing body.
- C. "County Property Taxes" shall mean any property tax obligation on the County's secured or unsecured roll; except for tax obligations on the secured roll with respect to property held by a Contractor in a trust or fiduciary capacity or otherwise not beneficially owned by the Contractor.
- D. "Department" shall mean the County department, entity, or organization responsible for the solicitation and/or administration of the contract.
- E. "Default" shall mean any property tax obligation on the secured roll that has been deemed defaulted by operation of law pursuant to California Revenue and Taxation Code section 3436; or any property tax obligation on the unsecured roll that remains unpaid on the applicable delinquency date pursuant to California Revenue and Taxation Code section 2922; except for any property tax obligation dispute pending before the Assessment Appeals Board.
- F. "Solicitation" shall mean the County's process to obtain bids or proposals for goods and services.
- G. "Treasurer-Tax Collector" shall mean the Treasurer and Tax Collector of the County of Los Angeles. (Ord. No. 2009-0026 § 1 (part), 2009.)

EXHIBIT C
Title 2 ADMINISTRATION
Chapter 2.206 DEFAULTED PROPERTY TAX REDUCTION PROGRAM

2.206.030 Applicability.

This chapter shall apply to all solicitations issued 60 days after the effective date of the ordinance codified in this chapter. This chapter shall also apply to all new, renewed, extended, and/or amended contracts entered into 60 days after the effective date of the ordinance codified in this chapter. (Ord. No. 2009-0026 § 1 (part), 2009.)

2.206.040 Required Solicitation and Contract Language.

All solicitations and all new, renewed, extended, and/or amended contracts shall contain language which:

- A. Requires any Contractor to keep County Property Taxes out of Default status at all times during the term of an awarded contract;
- B. Provides that the failure of the Contractor to comply with the provisions in this chapter may prevent the Contractor from being awarded a new contract; and
- C. Provides that the failure of the Contractor to comply with the provisions in this chapter may constitute a material breach of an existing contract, and failure to cure the breach within 10 days of notice by the County by paying the outstanding County Property Tax or making payments in a manner agreed to and approved by the Treasurer-Tax Collector, may subject the contract to suspension and/or termination. (Ord. No. 2009-0026 § 1 (part), 2009.)

2.206.050 Administration and compliance certification.

- A. The Treasurer-Tax Collector shall be responsible for the administration of this chapter. The Treasurer-Tax Collector shall, with the assistance of the Chief Executive Officer, Director of Internal Services, and County Counsel, issue written instructions on the implementation and ongoing administration of this chapter. Such instructions may provide for the delegation of functions to other departments.
- B. Contractor shall be required to certify, at the time of submitting any bid or proposal to the County, or entering into any new contract, or renewal, extension or amendment of an existing contract with the County, that it is in compliance with this chapter is not in Default on any County Property Taxes or is current in payments due under any approved payment arrangement. (Ord. No. 2009-0026 § 1 (part), 2009.)

EXHIBIT C
Title 2 ADMINISTRATION
Chapter 2.206 DEFAULTED PROPERTY TAX REDUCTION PROGRAM

2.206.060 Exclusions/Exemptions.

- A. This chapter shall not apply to the following contracts:
1. Chief Executive Office delegated authority agreements under \$50,000;
 2. A contract where federal or state law or a condition of a federal or state program mandates the use of a particular contractor;
 3. A purchase made through a state or federal contract;
 4. A contract where state or federal monies are used to fund service related programs, including but not limited to voucher programs, foster care, or other social programs that provide immediate direct assistance;
 5. Purchase orders under a master agreement, where the Contractor was certified at the time the master agreement was entered into and at any subsequent renewal, extension and/or amendment to the master agreement.
 6. Purchase orders issued by Internal Services Department under \$100,000 that is not the result of a competitive bidding process.
 7. Program agreements that utilize Board of Supervisors' discretionary funds;
 8. National contracts established for the purchase of equipment and supplies for and by the National Association of Counties, U.S. Communities Government Purchasing Alliance, or any similar related group purchasing organization;
 9. A monopoly purchase that is exclusive and proprietary to a specific manufacturer, distributor, reseller, and must match and inter-member with existing supplies, equipment or systems maintained by the county pursuant to the Los Angeles Purchasing Policy and Procedures Manual, section P-3700 or a successor provision;
 10. A revolving fund (petty cash) purchase pursuant to the Los Angeles County Fiscal Manual, section 4.6.0 or a successor provision;
 11. A purchase card purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, section P-2810 or a successor provision;
 12. A non-agreement purchase worth a value of less than \$5,000 pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, section A-0300 or a successor provision; or

EXHIBIT C
Title 2 ADMINISTRATION
Chapter 2.206 DEFAULTED PROPERTY TAX REDUCTION PROGRAM

13. A bona fide emergency purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual section P-0900 or a successor provision;
 14. Other contracts for mission critical goods and/or services where the Board of Supervisors determines that an exemption is justified.
- B. Other laws. This chapter shall not be interpreted or applied to any Contractor in a manner inconsistent with the laws of the United States or California. (Ord. No. 2009-0026 § 1 (part), 2009.)

2.206.070 Enforcement and Remedies.

- A. The information furnished by each Contractor certifying that it is in compliance with this chapter shall be under penalty of perjury.
- B. No Contractor shall willfully and knowingly make a false statement certifying compliance with this chapter for the purpose of obtaining or retaining a County contract.
- C. For Contractor's violation of any provision of this chapter, the County department head responsible for administering the contract may do one or more of the following:
 1. Recommend to the Board of Supervisors the termination of the contract; and/or,
 2. Pursuant to chapter 2.202, seek the debarment of the contractor; and/or,
 3. Recommend to the Board of Supervisors that an exemption is justified pursuant to Section 2.206.060.A.14 of this chapter or payment deferral as provided pursuant to the California Revenue and Taxation Code. (Ord. No. 2009-0026 § 1 (part), 2009.)

2.206.080 Severability.

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. (Ord. No. 2009-0026 § 1 (part), 2009.)

EXHIBIT D

WeatherTRAK Product Series Warranty



WeatherTRAK Product Series Warranty

HydroPoint Data Systems Inc. warrants to the purchaser of its WeatherTRAK products, when shipped in its original carton that they will be free from defects in materials and workmanship for the time period set forth below. During the warranty period, HydroPoint Data Systems, Inc. will, at its option, either repair the defect or replace the defective product or part thereof at no charge to the purchaser for parts and labor during the warranty period.

- The ET plus Series has a three (3) year warranty from date of purchase
- The ET Pro2 Series (one-way and two-way models) have a five (5) year warranty from date of purchase.
- Peripherals, accessories, modems and other ancillary items purchased from HydroPoint Data Systems, Inc. will carry their manufacturer's standard warranty.

This warranty does not apply to any product which has been damaged, defaced, subjected to misuse, abnormal service or handling (including shipping damage), or which has been altered in design or construction.

The warranty described above is in addition to whatever implied warranty may be granted to purchaser by law. (All implied warranties, including the warranty of merchantability and fit for use, are limited to the period(s) from date of purchase set forth above).

Neither sales personnel of the seller nor any other person is authorized to make any warranties other than those described above, or to extend the duration of any warranties beyond the time period described herein.

The warranty described above shall be the sole and exclusive warranty granted by HydroPoint Data Systems, Inc. and shall be the sole and exclusive remedy available to the purchaser. Correction of defects, in the manner and period of time described herein, shall constitute complete fulfillment of all liabilities and responsibilities of HydroPoint Data Systems, Inc. to the purchaser with respect to the product, and shall constitute full satisfaction of all claims, whether based on contract, negligence, strictly liability or otherwise.

In no event shall HydroPoint Data Systems, Inc., be liable or in any way responsible, for any damages or defects in the product which were caused by repairs or attempted repairs performed by anyone other than HydroPoint Data Systems, Inc.

Nor shall HydroPoint Data Systems, Inc., be liable or in any way responsible for any incidental or consequential economic or property damage. Some states do not allow the exclusion of incidental or consequential damages, so the above exclusion may not apply to you.

This warranty does not apply to improper installation or grounding, acts of God, such as lightning strikes and/or electrical line power surges, floods, earthquakes, hurricanes, tornados, vandalism, vermin such as slugs, ants, rodents etc., or improper electrical connections.

Warranty Service Procedures

In order to enforce the rights under this limited warranty, the purchaser must notify HydroPoint Data Systems, Inc., of a warranty claim by contacting (800) 362-8774. At that time, the purchaser will be asked to provide dated proof of original purchase. Acceptable forms of this shall be a photo copy or scanned image of the dated original invoice faxed or emailed to HydroPoint Data Systems, Inc. The purchaser will also need to provide a full description of the type of problem occurring, a contact name, address and telephone number and/or email. Purchaser may also be asked to return the defective product at their own expense.

HydroPoint Data Systems, Inc.
1720 Corporate Circle
Petaluma, CA 94954
Tel (800) 362-8774; Fax (707) 769-9695